A. 1916A 306. The words "in the course of" are held to apply to the time, place, and circumstances under which the injury takes place. There is more difficulty in determining whether the injury "arises out of" the employment, that is, in establishing the causal connection between the employment and the injury. *Mueller Construction Co.* v. *Industrial Board of Illinois*, 283 Ill. 148, 118 N. E. 1028.

An injury "arises out of" an employment when it occurs in the course of the employment, and is a natural and necessary incident or consequence of it, though not foreseen or expected. *Larke* v. *John Hancock Mut. Life Ins. Co.*, 90 Conn. 303, 97 Atl. 320, L. R. A. 1916E 584. Only those accidents are embraced which happen to a servant while he is engaged in the discharge of some function or duty which he is authorized to undertake, and which is calculated to further, directly or indirectly, the master's business. The injury must be reasonably incident to the employment. *Fitzgerald* v. *Clarke*, [1908] 2 K. B. 796, 1 B. W. C. C. 197.

"If one employee assaults another employee, solely to gratify his feeling of anger or hatred, the injury results from the voluntary act of the assailant, and cannot be said to arise either directly out of the employment or as an incident of it." *Jacquemin* v. *Turner, etc., Co.*, 92 Conn. 382, 103 Atl. 115, L. R. A. 1918E 496. In the present case not only was the injury caused by the voluntary attack of the assailant, but also, the plaintiff instigated the altercation. The resulting assault, then, proceeded from a risk not originated by or "arising out of" the employment. Morever, in provoking the assault, the plaintiff performed no duty for his master, but, on the contrary, deserted that duty for personal ends, and thereby stepped out of his employment. *Griffin* v. *Roberson*, 162 N. Y. Supp. 313; *Union Sanitary Mfg. Co.* v. *Davis*, 64 Ind. App. 227, 115 N. E. 676.

See L. R. A. 1916A 40, 240, for full discussion of injuries "arising out of and in the course of" employment. See also 3 VA. LAW REV. 232, 6 VA. LAW REV. 67.

MUNICIPAL CORPORATIONS—POLICE POWER—BUILDING LINES.—A State statute gave a city the power to establish building lines within its limits and did not provide for compensation to the owner of property fronting on the streets where such lines were established. The defendants were interested in the development of a certain tract of land in the city and laid out plans and sold lots on newly formed streets without regard to the building lines as established by the city. The city brought suit to restrain them from further opening such streets or selling lots fronting thereon. The defendants claimed that the statute in question was void as providing for the taking of property without due process of law—compensation not being provided for. The city contended that this was a proper exercise of the police power. *Held*, that the defendants be restrained. *Town of Windsor* v. *Whitney* (Conn.), 111 Atl. 354. See NOTES, p. 649.

NUISANCE—INJUNCTION—COTTON GIN.—Plaintiffs acquired homes in that part of a town which was known as the "ginning" section. To the

knowledge of plaintiffs, but without objection from them, defendant erected a cotton gin in close proximity to plaintiffs' homes, equipping it with modern devices calculated to prevent vibrations and the escape of dust and lint. In spite of these precautions, plaintiffs suffered annoyance from the gin, and brought this suit to have it enjoined as a nuisance. *Held*, the injunction is denied. *Oliver* v. *Forney Cotton Oil & Ginning Co.* (Tex. Civ. App.), 226 S. W. 1094.

Unless a nuisance exists *per se*, or unless the loss resulting from the nuisance is irreparable, the courts will not enjoin it. *Goodall* v. *Crofton*, 33 Ohio St. 271, 31 Am. Rep. 535. And where it appears that the injury to plaintiff is not comparable to that which defendant and the general public would suffer if the nuisance were enjoined, the court will deny the injunction. *Galveston, etc., R. Co.* v. *De Groff*, 102 Tex. 433, 118 S. W. 134, 21 L. R. A. (N. S.) 749. But though an injunction restraining the nuisance is not allowed, the plaintiff still has an action for damages for the loss he has sustained. *Rainey* v. *Red River, etc., R. Co.*, 99 Tex. 276, 89 S. W. 768, 90 S. W. 1096, 3 L. R. A. (N. S.) 590, 122 Am. St. Rep. 622, 13 Ann. Cas. 580. See *Baltimore, etc., R. Co.* v. *Fifth Baptist Church*, 108 U. S. 317.

On principle, cotton gins, so far from being nuisances *per se*, are necessary establishments in all cotton-producing communities, and to secure an abatement of them, plaintiff should be required to show material injury to himself or his property. Where he is able to show such loss, as where the gin diminished the rental value of plaintiff's house on account of emission of dust and lint, an injunction is granted. *Faulkenbury* v. *Wells*, 28 Tex. Civ. App. 621, 68 S. W. 327. But where he can show annoyance only, the injunction will be denied. *Hamm* v. *Gunn*, 51 Tex. Civ. App. 424, 113 S. W. 304. *A fortiori*, equity will not usually enjoin a thing which is not, but may become, a nuisance. Thus an injunction was not issued to prevent the construction of a cotton gin, admitted to be a useful and necessary business, although plaintiff could establish that by its erection the air in his home would probably be rendered impure. *Rouse* v. *Martin*, 75 Ala. 510, 51 Am. Rep. 463. So where defendant was about to drill a gas well near plaintiff's premises, the court would not enjoin the drilling, on the ground that the contemplated injuries complained of were not inevitable but merely doubtful and contingent. *Windfall Mfg. Co.* v. *Patterson*, 148 Ind. 414, 47 N. E. 2, 37 L. R. A. 381, 62 Am. St. Rep. 532.

In cases which seek to enjoin alleged nuisances, where there is an apparent conflict of rights, "locality" is usually the determining factor. *Gose* v. *Coryell*, 59 Tex. Civ. App. 504, 126 S. W. 1164. Thus where defendant built a machine shop in an exclusive residential section of a city, the court enjoined it as being a nuisance. *McMorran* v. *Fitzgerald*, 106 Mich. 649, 64 N. W. 569, 58 Am St. Rep. 511. On the other hand, where an injunction was sought against a coffin manufacturing company in a city on account of smoke and cinders from the factory, it was denied, the court admitting the inconveniences complained of, but holding that they were mere incidents of city life. *Louisville Coffin Co.* v. *Warren*, 78 Ky. 400. See *Bentley* v. *Empire Portland Cement Co.*, 96 N. Y. Supp. 831.

Persons seeking to have nuisances enjoined usually rely on the maxim *"Sic utere tuo ut alienum non laedas"*, which is at the basis of all suits for injunctions on account of nuisances. *Ross* v. *Butler*, 19 N. J. Eq. 294, 97 Am. Dec. 654; *Rouse* v. *Martin*, *supra*. But the interests of the public often require the application of the converse, which is equally sound, that the plaintiff is without this remedy if, for example, he deliberately settles in that part of a town already devoted to offensive but lawful enterprises; otherwise, many manufactories and other industries essential to the industrial development of a city could be summarily stopped. *Gilbert* v. *Showerman*, 23 Mich. 448. Similar reasons were given in denying an injunction against a cotton ginning company, the court declaring the interests of the public paramount to those of the plaintiff. *Strieber* v. *Ward* (Tex. Civ. App.), 196 S. W. 720.

WITNESSES—COMPETENCY OF CHILDREN—SENSE OF MORAL RESPONSIBILITY. —Plaintiff offered as a witness a nine year old boy. Although convinced of the boy's mental capacity, the trial judge found him incompetent, on the ground that he showed a lack of moral responsibility. An exception was taken to the exclusion of the testimony. *Held*, exception overruled. *Goy* v. *Director General of Railroads* (N. H.), 111 Atl. 855.

Several early cases held that children under nine years of age were incompetent to testify. *Rex* v. *Travers*, 2 Str. 700; *Rex* v. *Dunnel*, 1 East P. C. 442. It is now well settled that no precise minimum age can be fixed at which children shall be excluded from testifying. *State* v. *Tolla*, 72 N. J. L. 515, 62 Atl. 675, 3 L. R. A. (N. S.) 523.

The mental capacity required consists of ability to receive just impressions of facts to which the testimony relates and ability to relate such facts correctly. *People* v. *Bernal*, 10 Cal. 66; *Wade* v. *State*, 50 Ala. 164. A further requirement is the appreciation of the nature and obligation of an oath. *McGuff* v. *State*, 88 Ala. 147, 7 So. 35, 16 Am. St. Rep. 25; *Flanagin* v. *State*, 25 Ark. 92. This does not imply, however, that the child must be able to define the word "oath", or understand the legal nature of an oath, but an adequate sense of the impropriety of falsehood is all that is necessary. *Williams* v. *United States*, 3 App. D. C. 335; *State* v. *Meyer*, 135 Iowa 507, 113 N. W. 322, 124 Am. St. Rep. 291 and note.

There must also be, by the great weight of authority, a sense of moral responsibility,—a consciousness of the duty to speak the truth. *Wheeler* v. *U. S.*, 159 U. S. 523; *Commonwealth* v. *Robinson*, 165 Mass. 426, 43 N. E. 121; WIGMORE, EVIDENCE, § 506. This is the ruling in the instant case. However, it is generally held, there need not be clear beliefs with respect to the certainty and manner of punishment after death. *Moore* v. *State*, 79 Ga. 498, 5 S. E. 51; *Commonwealth* v. *Furman*, 211 Pa. 549, 60 Atl. 1089, 107 Am. St. Rep. 594. It is enough if the child understands that he will be punished on earth, although he knows nothing of punishment after death. *Sancedo* v. *State* (Tex. Cr. App.), 69 S. W. 142.

The discretion of the trial court should be allowed to control in de-